

Part 2

Requirements for State Agencies

63L-3-201 State agencies to adopt guidelines.

- (1) Each state agency shall adopt guidelines to assist them in the identification of actions that have constitutional taking implications.
- (2) In creating the guidelines, the state agency shall take into consideration recent court rulings on the taking of private property.
- (3) Each state agency shall complete the guidelines on or before January 1, 1999, and review and update the guidelines annually to maintain consistency with court rulings.

Renumbered and Amended by Chapter 382, 2008 General Session

63L-3-202 Agency actions.

- (1) Using the guidelines prepared under Section 63L-3-201, each state agency shall:
 - (a) determine whether an action has constitutional taking implications; and
 - (b) prepare an assessment of constitutional taking implications that includes an analysis of the following:
 - (i) the likelihood that the action may result in a constitutional taking, including a description of how the taking affects the use or value of private property;
 - (ii) alternatives to the proposed action that may:
 - (A) fulfill the government's legal obligations of the state agency;
 - (B) reduce the impact on the private property owner; and
 - (C) reduce the risk of a constitutional taking; and
 - (iii) an estimate of financial cost to the state for compensation and the source of payment within the agency's budget if a constitutional taking is determined.
- (2) In addition to the guidelines prepared under Section 63L-3-201, each state agency shall adhere, to the extent permitted by law, to the following criteria if implementing or enforcing actions that have constitutional taking implications:
 - (a) If an agency requires a person to obtain a permit for a specific use of private property, any conditions imposed on issuing the permit shall directly relate to the purpose for which the permit is issued and shall substantially advance that purpose.
 - (b) Any restriction imposed on the use of private property shall be proportionate to the extent the use contributes to the overall problem that the restriction is to redress.
 - (c) If an action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.
 - (d) Before taking an action restricting private property use for the protection of public health or safety, the state agency, in internal deliberative documents, shall:
 - (i) clearly identify, with as much specificity as possible, the public health or safety risk created by the private property use;
 - (ii) establish that the action substantially advances the purpose of protecting public health and safety against the specifically identified risk;
 - (iii) establish, to the extent possible, that the restrictions imposed on the private property are proportionate to the extent the use contributes to the overall risk; and
 - (iv) estimate, to the extent possible, the potential cost to the government if a court determines that the action constitutes a constitutional taking.

- (3) If there is an immediate threat to health and safety that constitutes an emergency and requires an immediate response, the analysis required by Subsection (2)(b) may be made when the response is completed.
- (4) Before the state agency implements an action that has constitutional taking implications, the state agency shall submit a copy of the assessment of constitutional taking implications to the governor and the Legislative Management Committee.

Amended by Chapter 356, 2009 General Session